

(2021) 10 TEL CK 0053
In the Telangana High Court
Case No : Criminal Appeal No. 1120 Of 2009

State Of A.P.

APPELLANT

Vs

Donipalliraju

RESPONDENT

Date of Decision : 28-10-2021

Acts Referred:

Dowry Prohibition Act, 1961 — Section 2
Indian Penal Code, 1860 — Section 304B

Citation : (2021) 10 TEL CK 0053

Hon'ble Judges : Dr. Chillakur Sumalatha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. Challenging the validity and the legality of the judgment dated 26.07.2007 rendered by the Court of the II Additional Sessions Judge, (Fast Track Court), Adilabad, in Sessions Case No.161 of 2007, through which the respondents-accused were acquitted of the charge levelled against them, the appellant is before this Court by way of appeal.

2. In the grounds of appeal, it is urged that the judgment of the trial Court is contrary to law, weight of evidence and probabilities of the case; that the learned judge of the trial Court ought to have seen that the ingredients to constitute the offence punishable under Section 304-B I.P.C. were made out by the prosecution; that the learned judge by not appreciating the evidence properly and based on assumptions and presumptions acquitted the respondents-accused; that the learned judge ought to have observed that independent witnesses would not be available for the things that would happen within the four walls of the house; and that the learned judge failed to observe that the deceased died within seven years of her marriage at her in-laws house and thus, the acquittal of the respondents-accused is unsustainable and as such, the appeal has to be allowed.

3. Reported to take it as heard by the learned Additional Public Prosecutor as well

as the learned counsel appearing for the respondents-accused.

4. Now the points that arise for determination are:

(1) Whether the prosecution emerged successful in proving beyond all reasonable doubt that Smt. Donipally Surekha died otherwise than under normal circumstances and that, soon before her death, she was subjected to cruelty or harassment by the respondents-accused in connection with the demand of dowry.

(2) Whether there exists any infirmity in the judgment of the trial Court either in appreciating the facts of the case or in applying the established principles of law to the said facts, as contended by the appellant, which in turn requires the interference of this Court exercising the appellate jurisdiction.

5. Point No.1:

The matrix of the prosecution case, as could be culminated from the charge sheet, is that P.W-1 has three daughters and two sons and the deceased-Donipally Surekha (for brevity, hereinafter referred as "the deceased") is his third daughter and P.W-1 performed the marriage of the deceased with the first accused on 05.04.2006 paying net cash of Rs.8,000/- and promising to give half tula of gold after the marriage, but the deceased and the first accused enjoyed their family life for a period of five days only and later, on the instigation of accused Nos.2 to 4, the first accused started harassing the deceased for half tula of gold that was promised to be given by her parents and the deceased due to the said harassment, vexed with her life, decided to commit suicide and accordingly, on 15.4.2006, at about 6.30 pm., she poured kerosene on her body and set herself ablaze, due to which, she received burn injuries all over the body and she was shifted to the Government Hospital, Adilabad, for treatment and that on 20.4.2006, she died while undergoing treatment.

6. A perusal of record of the trial Court reveals that the learned judge of the trial Court, subjecting to the test of credibility the evidence produced by the prosecution, both oral and documentary, came to a conclusion that there is no clear material on record and cogent evidence to show that the accused harassed the deceased and thereby, she has committed suicide and with the said finding, the learned judge found that the prosecution failed to establish the guilt of the respondents-accused beyond all reasonable doubt and accordingly, he acquitted them.

7. Now, to answer the challenge of the appellant and to verify whether the grounds urged in the appeal are sustainable to allow this appeal and to set aside the judgment of the trial Court, this Court has to subject the entire investigation to strict scrutiny.

8. The crucial witnesses to this case are P.Ws.1 to 5. P.Ws.1 to 3 supported the case of the prosecution in all material particulars. By their evidence, it is clear that P.Ws.1 to 3 are the father, the mother and the brother of the deceased respectively. All these three witnesses gave evidence to the effect that the

deceased was given in marriage to the first accused and an amount of Rs.8,000/- was paid as dowry and half tula of gold which was agreed to be given could not be given at the time of marriage and it was agreed to give the said half tula of gold within one month of the marriage and immediately, after the marriage, the deceased joined the first accused for leading marital life, but she was subjected to harassment by the accused and therefore, she set herself ablaze on the date of the incident.

9. The further evidence of P.W-1 is that on 15.4.2006, during night, he received a phone call from P.W-4 that his daughter (the deceased) received burn injuries and immediately he went to the house of the accused and found his daughter with burn injuries and he along with accused Nos.1 to 3 shifted his daughter to the Government Hospital, Adilabad, and his daughter died at the hospital on 20.4.2006 while undergoing treatment and his daughter informed him that due to the harassment of the accused demanding half tula of gold, she committed suicide. He further stated that he presented Ex.P-1-complaint to Police.

10. How far the evidence of P.Ws.1 to 3 can be relied upon is the aspect to be seen. The evidence of P.Ws.4 and 5 shatters the version of P.W-1. P.Ws.4 and 5 categorically stated that their house is located adjacent to the house of the accused and P.W-1 came to their village one day prior to the incident and he also accompanied them to the hospital.

11. P.W-1 during the course of cross-examination stated that there are no direct buses from their village to Pippalkoti village (the place where the incident occurred) and they have to go to Adilabad from their village and thereafter, they have to go to the Village of the accused and it may take about two hours. He also stated that it may take about one hour to go to Bori from their village and it may take another one hour to proceed from Bori to Adilabad and another one hour to proceed from Adilabad to Pippalkoti and to return to Adilabad it may take another one hour. If the time calculation is made, as per these statements, the possibility of P.W-1 proceeding from his Village to Pippalkoti, the village of the accused, and then shifting the deceased to the Government hospital located at Adilabad becomes highly impossible.

12. The incident, as per the version of the prosecution, occurred on 15.4.2006 at about 6.30 pm. Ex.P-6-dying declaration reveals that intimation was received by the Magistrate concerned for recording the dying declaration of the deceased on the same day at 8.45 pm. Therefore, it is clear that within two or three hours of the incident, the deceased was shifted to the Government Hospital, Adilabad, for treatment. As per the version of P.W-1 himself, it takes one hour to Adilabad from the village of the accused. Thus, P.W-1 receiving the information from P.W-4 in the night hours and his rushing to the village of the accused from his house, as earlier stated by him, is highly improbable. The same aspect is observed by the trial Court also.

13. None of the material witnesses who supported the case of the prosecution,

more particularly P.Ws.1 to 3, stated that the deceased at any point of time prior to the date of the incident at least informed them that the accused demanded her to get half tula of gold as agreed upon.

14. The prosecution, to establish its version, also placed reliance on the evidence of P.W-7-Magistrate who recorded the dying declaration of the deceased. The evidence of P.W-7 is that on 15.4.2006, at 8.45 pm., she received a requisition from Police, Adilabad-II (T), for recording the dying declaration of the deceased and that, she reached the Government Hospital, Adilabad, at 9.10 pm and found the patient in Casualty ward and the patient was identified by the duty doctor and after sending away all the attendants of the patient from that place, she enquired the doctor and the doctor reported that the patient is conscious and can make a statement and that, she put some preliminary questions to the deceased to understand her state of mind and thereafter, P.W-7 revealed her identity to the patient and after being satisfied with her mental condition, she proceeded to record her dying declaration and that the deceased stated that her name is Surekha and she poured kerosene and set herself on fire and when a question was put about the reason, the deceased stated that she is not interested to live and that her husband is good, but as she is not interested to live, she ended her life and that P.W-7 obtained the toe impression of the deceased on the dying declaration and that Ex.P-5 is the requisition received by P.W-7 from Police and Ex.P-6 is the dying declaration of the deceased recorded by P.W-7.

15. The relevant portion in Ex.P-6-dying declaration of the deceased is extracted as follows:-

16. Thus, there is no convincing evidence that is brought on record, either through the prosecution witnesses who deposed before the trial Court or through the dying declaration of the alleged victim, to connect the respondents-accused with the crime.

17. Having considered all the above aspects, this Court is of the view that the evidence produced by the prosecution does not inspire confidence to act upon against the respondents-accused.

18. It is incumbent on the part of the prosecution to establish in clear terms that the death which occurred otherwise than under normal circumstances within seven years of marriage is due to the reason of subjecting the deceased to cruelty or harassment by the husband of the victim or any relative connected to him for or in connection with any demand of dowry.

19. Needless to say that the term 'dowry' carries the same meaning as assigned under Section 2 of the Dowry Prohibition Act, 1961. The prosecution totally failed in its attempt to establish the required factors as laid down under law. Therefore, this Court concludes that though the prosecution attempted, it failed to establish the guilt of the respondents-accused beyond all reasonable doubt before the trial Court.

20. Point No.2:-

A meticulous perusal of the judgment of the trial Court reveals that the learned judge of the trial Court had dealt with all the aspects of the case in detail, gave clear findings on each aspect of the case and came to a just conclusion. None of the grounds urged in the appeal, therefore, can disturb the said well-reasoned judgment of the trial Court. Therefore, this Court concludes that this appeal lacks merits and deserves dismissal.

21. In the result, this Criminal Appeal stands dismissed confirming the judgment dated 26.07.2007 rendered by the Court of the II Additional Sessions Judge, (Fast Track Court), Adilabad, in Sessions Case No.161 of 2007.

22. Pending Miscellaneous Petitions, if any, shall stand closed.